

**Spectron, Inc. Superfund Site,**  
**Elkton, Maryland:**  
**Memorandum of Agreement**  
**Regarding Coordination of Natural Resource Restoration and**  
**Management of Settlement Funds**  
**among the**  
**Maryland Department of Natural Resources,**  
**National Oceanic & Atmospheric Administration,**  
**and**  
**United States Department of the Interior,**  
**Acting through the**  
**United States Fish & Wildlife Service**

**I. INTRODUCTION**

This Memorandum of Agreement for Coordination of Natural Resource Restoration and Management of Settlement Funds ("the Agreement") is entered into by and between the Maryland Department of Natural Resources (MDNR), the National Oceanic and Atmospheric Administration (NOAA), and the United States Fish and Wildlife Service (USFWS), acting on behalf of the United States Department of the Interior (collectively referred to as "the Trustees") in recognition of their common interests and responsibilities as Trustees of natural resources on behalf of the public to ensure the coordination and cooperation among the Trustees.

The purpose of this Agreement is to plan, implement and oversee the restoration, replacement, rehabilitation and/or acquisition of natural resources, which may have been injured, destroyed or lost as a result of hazardous substance releases at or from the Spectron, Inc. Superfund Site (the "Site") in Elkton, Maryland.

This Agreement provides the framework for the use and expenditure of \$445,600.00 in natural resource damages, together with interest accruing following receipt, which the Trustees recovered in settlement of the joint claim for natural resource damages which they asserted in United States v. Agere Systems, Inc., Civil No. AMD-07-CV-0155 (D. Md. 2007), pursuant to a Consent Decree entered on March 16, 2007 (the "Consent Decree"). The funds are being held in the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Account (the "Account"), solely for use by the Trustees to plan, implement and oversee restoration projects to restore, replace, rehabilitate and/or acquire natural resources equivalent to those injured by the release of hazardous substances at or from the Site.

This Agreement will serve as the Memorandum of Agreement required by the Consent Decree to be entered into among the Trustees for the expenditure of the settlement funds and any accrued interest thereon.

**II. PARTIES**

The following officials, or their designees, are Parties to this Agreement and act on behalf



of the public as Trustees of natural resources under this Agreement:

1. Secretary of the Maryland Department of Natural Resources,
2. The Director, Office of Response and Restoration, of the National Oceanic and Atmospheric Administration, and
3. The Regional Director, Region 5 of the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior.

### III. AUTHORITY

The Trustees enter into this Agreement in accordance with the authorities provided for each Trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(f); the National Contingency Plan (NCP), 40 C.F.R. §§ 300.600 through 300.615; and other applicable state and Federal laws.

### IV. PURPOSE AND SCOPE

This Agreement is intended to guide and provide a framework for cooperation and coordination among the Trustees and to govern the Trustees' use and expenditure of jointly recovered natural resource damages to plan and implement actions appropriate to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, lost or destroyed as a result of releases of hazardous substances at or from the Site, consistent with their duties and responsibilities as Trustees and the terms of the Consent Decree.

### V. STATEMENT OF OBJECTIVES

The natural resource damages which the Trustees jointly recovered pursuant to the Consent Decree, plus any interest accruing thereon (the "Settlement Funds"), shall be used by the Trustees to plan, implement and oversee restoration projects to restore, replace, and/or acquire natural resources equivalent to those injured by the release of hazardous substances at or from the Site, in accordance with a restoration plan (the "Restoration Plan") to be developed by the Trustees. In developing this Restoration Plan and in accomplishing this shared objective, the Trustees will coordinate with one another to:

- A. Develop and implement a Restoration Plan for the Site in an expeditious and efficient manner, and in accordance with the Federal and state law, including requirements applicable to restoration planning as may be found within CERCLA, 43 C.F.R. Part 11.
- B. Provide an appropriate opportunity for public review and comment during development of that Restoration Plan through publication of a Draft Restoration Plan and consider all comments received regarding the Draft Restoration Plan before making any final decisions regarding restoration actions;



- C. Consistent with the terms of the Consent Decree and this Agreement, provide for the expenditure of monies from the Settlement Funds as necessary or appropriate to develop and implement the Final Restoration Plan.

## VI. NATURAL RESOURCE TRUSTEE COUNCIL

A. Organization. The Trustees herein establish the Spectron Trustee Council (the "Council") to implement this Agreement. Within fourteen (14) days of the execution of this Agreement, each Trustee shall designate a Primary Trustee Representative to the Council, who shall be authorized to vote on behalf of that Trustee. Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to act, and vote in the absence of the Primary Trustee Representative. Each Trustee may, by written notification to all other Trustees, change the Primary and/or Alternate Trustee Representative designees. Counsel for the Trustees may attend meetings in a legal/consultative role.

B. Communications. All correspondence and communications to or between the Trustees pertaining to activities, which are subject to coordination and cooperation under this Agreement, shall be sent to the Primary Trustee Representative of each Trustee.

C. Duties and Responsibilities. The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions to be taken or authorized by the Council in implementing this Agreement include but are not limited to:

1. Planning, contracting for, or otherwise undertaking and overseeing the development and implementation of the Restoration Plan; and
2. Taking such other actions as the Council determines are necessary or appropriate to implement this Agreement.

D. Decision-making. All decisions by the Council implementing this Agreement shall be made by consensus. The Trustees recognize that they each have unique areas of expertise and authority; however, they agree that their decision-making deliberations will focus on the Trustees' shared purpose of restoring, replacing, rehabilitating, and/or acquiring the equivalent of the injured natural resources.

E. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees involved in the dispute and consensus by the Council as a whole. If a unanimous decision cannot be reached, the matter shall be elevated to the signatories of this Agreement who shall attempt to resolve the dispute. If the signatories are not able to personally resolve the dispute, they may delegate their decision-



making authority to a different senior management official or take other appropriate actions as directed by their respective agencies. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved.

F. Lead Administrative Trustee. The Trustees hereby designate NOAA as Lead Administrative Trustee ("LAT") under this Agreement for the purpose of coordinating Trustee activities towards planning and implementing restoration. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the LAT and/or the other Trustee entities shall be arrived at by resolution of the Trustee Council.

## VII. USE OF FUNDS

A. General Use. The Settlement Funds may only be used by the Trustees to plan, implement and oversee the Restoration Plan. Such use includes payment or reimbursement of the administrative costs and expenses incurred by the Trustees in developing and implementing the Restoration Plan in accordance with this Agreement.

Trustee administrative costs or expenses include, but are not limited to direct and indirect costs associated with (a) preparation or review of documents pertinent to the development or implementation of the Restoration Plan; (b) administration, management, or oversight of contracts or projects; and (c) travel;

B. Procedures Relating to Use of or Access to Funds. The Council, in accordance with the decision-making process identified in Section VI, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of Settlement Funds to effectuate the purposes of this Agreement. Disbursement of funds from the Account, including for reimbursement of administrative costs and expenses incurred by the Trustees, will be by unanimous written agreement of all Council members.

## VIII. RESERVATION OF RIGHTS

Each Trustee has and reserves the right to take any action within the scope of its authority as a Trustee, including as may be necessary to pursue and/or to preserve any legal rights or remedies available to it as a Trustee. Nothing in this Agreement is intended to waive or foreclose any such rights.

## IX. MODIFICATION OF AGREEMENT

This Agreement may be modified by a written agreement signed and dated by all of the Trustees., before any changes become effective.



## X. TERMINATION and WITHDRAWAL

A. This Agreement shall remain in effect until completion of all work required pursuant to the Restoration Plan or at such other time as the Trustees, in their sole discretion, determine appropriate.

B. In the event any Trustee withdraws from the Agreement, such withdrawal must be in writing at least thirty (30) days in advance of the withdrawal. The withdrawing Trustee must send written notice by certified mail, return receipt requested, to each of the other Primary Trustees Representative on the Council. The date of receipt of notice shall be as specified in post office records. Such withdrawing Trustee forfeits all rights pursuant to this Agreement including, without limitation, the right to decide how Settlement Funds are to be expended and to authorize expenditures of Settlement Funds from the Account. Subject to the terms of Section VII.B above, such withdrawing Trustee may recoup allowable administrative costs incurred as of the date of its withdrawal from this Agreement. In the event of such withdrawal, this Agreement remains in full force and effect for the remaining Trustees.

## XI. LIMITATION

The responsibilities and commitments identified in this Agreement are wholly subject to the availability of funds, including from the Account. Nothing in this Agreement shall be construed as obligating the United States, the State of Maryland, MDNR, USFWS, NOAA or any other public agency, their officers, agents, or employees to expend any funds in excess of those that are legally reimbursable from the Account and authorized by law.

## XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement represent guidance for the Trustees. This Agreement does not, and is not to be construed as, providing the basis of any third party challenges or appeals.

## XIII. NONDISCRIMINATION

In performing this Agreement, the Trustees will not discriminate against any person because of race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, marital status or political affiliation.

## XIV. EXECUTION: EFFECTIVE DATE

This Agreement may be executed in counterparts. A copy with all original executed

signature pages affixed shall constitute an original Agreement. The date of execution shall be the date on which the last Trustee representative signs the Agreement..

#### XV. ANTI-DEFICIENCY

Nothing in this Agreement shall be construed as obligating the United States or the State of Maryland, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Agreement for Coordination of Natural Resource Restoration and Management of Settlement Funds on the date appearing under their signatures.

#### MARYLAND DEPARTMENT OF NATURAL RESOURCES

\_\_\_\_\_  
John R. Griffin  
Secretary

\_\_\_\_\_  
Date



IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Agreement for Coordination of Natural Resource Restoration and Management of Settlement Funds on the date appearing under their signatures.

MARYLAND DEPARTMENT OF NATURAL RESOURCES

  
John R. Griffin  
Secretary

6/25/07  
Date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

\_\_\_\_\_  
Ken Barton  
Acting Director  
Office of Response and Restoration

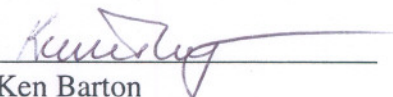
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Date

UNITED STATES DEPARTMENT OF THE INTERIOR

\_\_\_\_\_  
Marvin E. Moriarty  
Regional Director  
U.S. Fish & Wildlife Service, Region 5

\_\_\_\_\_  
Date

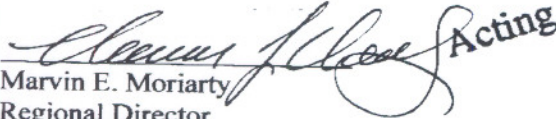
## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

  
Ken Barton  
Acting Director  
Office of Response and Restoration

12/27/07  
Date



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 Acting  
Marvin E. Moriarty  
Regional Director  
U.S. Fish & Wildlife Service, Region 5

8.15.07  
Date